



COVERED
ELECTRONIC WASTE
RECYCLING FEE

CONTENTS			Page
Health and Safety Code Provisions			
CHAPTER	6.5	HAZARDOUS WASTE CONTROL	8631
Article	10.3	Electronic Waste	8631
Section	25214.9	Management standards	8631
	25214.10	“Electronic device”; adoption of regulations prohibiting sale of certain electronic devices	8631
	25214.10.1	Identification of electronic device as a covered electronic device	8632
	25214.10.2	Adoption of regulations; authority to adopt as emergency regulations	8634

CONTENTS

Page

Public Resources Code Provisions

CHAPTER	3.5	HOUSEHOLD HAZARDOUS WASTE ELEMENTS	8635
Article	4	Covered Electronic Waste	8635
Section	41516	Promotion of collection, consolidation, recovery, and recycling of covered electronic waste	8635
CHAPTER	8.5	ELECTRONIC WASTE RECYCLING.....	8635
Article	1	Covered Electronic Waste	8635
Section	42460	Citation of act	8635
	42461	Legislative findings; purpose of act.....	8635
Article	2	Definitions	8636
Section	42463	Definitions	8636
Article	3	Covered Electronic Waste Recycling Fee.	8639
Section	42464	Covered electronic waste recycling fee....	8639
	42464.2	Collection of fees by board.....	8640
	42464.2	Collection of fees	8640
	42464.4	Due date; returns and payments	8640
	42464.6	Petition for redetermination and claim for refund	8640
Article	4	Manufacturer Responsibility	8641
Section	42465	Sales of noncomplying electronic devices unlawful	8641
	42465.1	Manufacturer's name of brand to be readily visible	8641
	42465.2	Duties of manufacturers; information and report	8641
	42465.3	Manufacturer notification requirements ...	8643
Article	5	Administration	8643
Section	42472	Statewide applicability of fee; local collection or recycling programs.....	8643
	42473	Fee declared not to be a tax	8643
	42474	Civil penalties	8643
	42474.5	Enforcement of chapter	8644
	42475	Administration of chapter	8644
	42475.2	Emergency regulations	8644
	42475.3	Electronic waste working group.....	8645
	42475.4	Annual statewide recycling goals for covered electronic waste	8645
Article	6	Financial Provisions	8646
Section	42476	Electronic Waste and Recovery and Recycling Account.....	8646

CONTENTS (Contd.)		Page
42476.5	Duties of person exporting covered electronic waste	8648
42476.6	Export component part for reuse or recycling	8648
42477	Electronic waste recovery payment schedule; authorized collector.....	8648
42478	Electronic waste recycling payment schedule; recycler	8649
42479	Payment process; eligibility for payment .	8649
Article 7	State Agency Procurement	8650
Section 42480	Compliance with chapter by prospective bidders; violations.....	8650
Article 8	Inapplicability of Chapter	8650.1
Section 42485	Chapter not to be implemented under certain circumstances	8650.1
42486	Chapter not implemented; provisions remaining operative	8650.1
INDEX.....		8650.3

8630
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COVERED ELECTRONIC WASTE RECYCLING FEE
Public Resources Code

COVERED ELECTRONIC WASTE RECYCLING FEE

CHAPTER 6.5. HAZARDOUS WASTE CONTROL

Article 10.3. Electronic Waste *

§ 25214.9. Management standards.

§ 25214.10. “Electronic device”; adoption of regulations prohibiting sale of certain electronic devices.

§ 25214.10.1. Identification of electronic device as a covered electronic device.

§ 25214.10.2. Adoption of regulations; authority to adopt as emergency regulations.

25214.9. **Management standards.** (a) The requirements and other provisions of Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the Public Resources Code are incorporated by reference as requirements and provisions of this chapter.

(b) To the extent consistent with the federal act, the department may, by regulation, establish management standards as an alternative to one or more of the standards in this chapter, for any specified activity that involves the management of an electronic waste.

25214.10. **“Electronic device”; adoption of regulations prohibiting sale of certain electronic devices.** (a) For purposes of this section, “electronic device” has the same meaning as a “covered electronic device,” as defined in Section 42463 of the Public Resources Code.

(b) The department shall adopt regulations, in accordance with this section, that prohibit an electronic device from being sold or offered for sale in this state if the electronic device is prohibited from being sold or offered for sale in the European Union on and after its date of manufacture, to the extent that Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003, and as amended thereafter by the Commission of European Communities, prohibits that sale due to the presence of certain heavy metals.

(c) The regulations adopted pursuant to subdivision (b) shall take effect January 1, 2007, or on or after the date Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003, takes effect, whichever date is later.

(d) The department shall exclude, from the regulations adopted pursuant to this section, the sale of an electronic device that contains a substance that is used to comply with the consumer, health, or safety requirements that are required by the Underwriters Laboratories, the federal government, or the state.

(e) In adopting regulations pursuant to this section, the department may not require the manufacture or sale of any electronic device that is different than, or otherwise not prohibited by, the European Union under Directive

* Article 10.3 was added by Stats. 2003, Ch. 526 (SB 20), in effect January 1, 2004.

2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003.

(f) (1) The department may not adopt any regulations pursuant to this section that impose any requirements or conditions that are in addition to, or more stringent than, the requirements and conditions expressly authorized by this section.

(2) In complying with this subdivision, the department shall use, in addition to any other information deemed relevant by the department, the published decisions of the Technical Adaptation Committee and European Union member states that interpret the requirements of Directive 2002/95/EC.

History.—Amended by Stats. 2004, Ch. 863 (SB 50), in effect September 29, 2004.

25214.10.1. Identification of electronic device as a covered electronic device. (a) For purposes of this section, the following definitions shall apply:

(1) “Electronic device” means a video display device, as defined in subdivision (t) of Section 42463 of the Public Resources Code, with a screen size of greater than four inches.

(2) “Covered electronic device,” “manufacturer,” and “retailer” have the same meaning as those terms are defined in Section 42463 of the Public Resources Code.

(b) The department shall adopt regulations that identify electronic devices that the department determines are presumed to be, when discarded, a hazardous waste pursuant to this chapter.

(c) (1) Except as provided in subdivision (e), a manufacturer of an electronic device that is identified in the regulations adopted by the department shall send a notice in accordance with the schedule specified in subparagraph (A) or (B), as applicable, of paragraph (3), to any retailer that sells that electronic device manufactured by the manufacturer. The notice shall identify the electronic device, and shall inform the retailer that the electronic device is a covered electronic device and is subject to a fee in accordance with subdivision (d).

(2) A manufacturer subject to this subdivision shall also send a copy of the notice to the State Board of Equalization.

(3) The notice required by this subdivision shall be sent in accordance with the following schedule:

(A) On or before October 1, 2004, the manufacturer shall send a notice covering any electronic device manufactured by that manufacturer that is identified in the regulations adopted by the department on or before July 1, 2004, that identify the electronic devices that the department determines are presumed to be, when discarded, a hazardous waste pursuant to this chapter.

(B) On or before April 1, 2005, and on or before every April 1 of each year thereafter, the manufacturer shall send a notice covering any electronic

device manufactured by that manufacturer identified in the regulations adopted by the department pursuant to subdivision (b) on or before December 31 of the prior year.

(4) If a retailer sells a refurbished covered electronic device, the manufacturer is required to comply with the notice requirement of this subdivision only if the manufacturer directly supplies the refurbished covered electronic device to the retailer.

(d) (1) Except as provided in subdivision (e), a covered electronic device that is identified in the regulations adopted, on or before July 1, 2004, by the department, that identify electronic devices that the department determines are presumed to be, when discarded, a hazardous waste pursuant to this chapter shall, on and after January 1, 2005, be subject to Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the Public Resources Code, including the fee imposed pursuant to Section 42464 of the Public Resources Code.

(2) Except as provided in subdivision (e), a covered electronic device identified in the regulations adopted by the department, pursuant to subdivision (b), shall, on and after July 1 of the year subsequent to the year in which the covered electronic device is first identified in the regulations, be subject to Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the Public Resources Code, including the fee imposed pursuant to Section 42464 of the Public Resources Code.

(e) (1) If the manufacturer of an electronic device that is identified in the regulations adopted by the department pursuant to subdivision (b) obtains the concurrence of the department that an electronic device, when discarded, would not be a hazardous waste, in accordance with procedures set forth in Section 66260.200 of Title 22 of the California Code of Regulations, the electronic device shall cease to be a covered electronic device and shall cease to be subject to subdivisions (c) and (d) on the first day of the quarter that begins not less than 30 days after the date that the department provides the manufacturer with a written nonhazardous concurrence for the electronic device pursuant to this subdivision. A manufacturer shall notify each retailer, to which that manufacturer has sold a covered electronic device, that the device has been determined pursuant to this subdivision to be nonhazardous and is no longer subject to a covered electronic recycling fee.

(2) No later than 10 days after the date that the department issues a written nonhazardous concurrence to the manufacturer, the department shall do both of the following:

(A) Post on the department's Web site a copy of the nonhazardous concurrence, including, but not limited to, an identification and description of the electronic device to which the concurrence applies.

(B) Send a copy of the nonhazardous concurrence, including, but not limited to, an identification and description of the electronic device to which the concurrence applies, to the California Integrated Waste Management Board and the State Board of Equalization.

(f) Notwithstanding Section 42474 of the Public Resources Code, a fine or penalty shall not be assessed on a retailer who unknowingly sells, or offers for sale, in this state a covered electronic device for which the covered electronic waste recycling fee has not been collected or paid, if the failure to collect the fee was due to the failure of the State Board of Equalization to inform the retailer that the electronic device was subject to the fee.

History.—Added by Stats. 2004, Ch. 863 (SB 50), in effect September 29, 2004.

25214.10.2. Adoption of regulations; authority to adopt as emergency regulations. A regulation adopted pursuant to this article may be adopted as an emergency regulation in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, an emergency regulation adopted by the department pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

History.—Added by Stats. 2004, Ch. 863 (SB 50), in effect September 29, 2004.

CHAPTER 3.5. HOUSEHOLD HAZARDOUS WASTE ELEMENTS

Article 4. Covered Electronic Waste *

§ 41516. Promotion of collection, consolidation, recovery, and recycling of covered electronic waste.

41516. Promotion of collection, consolidation, recovery, and recycling of covered electronic waste. (a) For purposes of this article, “covered electronic waste” has the same meaning as defined in subdivision (g) of Section 42463.

(b) On and after January 1, 2004, when a county or regional agency revises the countywide or regional integrated waste management plan and its elements pursuant to Section 41770, the city household hazardous waste element and county household hazardous waste element in the plan shall identify those actions the city, county, or regional agency is taking to promote the collection, consolidation, recovery, and recycling of covered electronic waste.

CHAPTER 8.5. ELECTRONIC WASTE RECYCLING

Enacted by Statutes 2003, Chapter 526 (SB 20), in effect January 1, 2004.

Article 1. Covered Electronic Waste

§ 42460. Citation of act.

§ 42461. Legislative findings; purpose of act.

§ 42463. Definitions.

42460. Citation of act. This act shall be known, and may be cited, as the Electronic Waste Recycling Act of 2003.

42461. Legislative findings; purpose of act. The Legislature finds and declares all of the following:

(a) The purpose of this chapter is to enact a comprehensive and innovative system for the reuse, recycling, and proper and legal disposal of covered electronic devices, and to provide incentives to design electronic devices that are less toxic, more recyclable, and that use recycled materials.

(b) It is the further purpose of this chapter to enact a law that establishes a program that is cost free and convenient for consumers and the public to return, recycle, and ensure the safe and environmentally-sound disposal of covered electronic devices.

(c) It is the intent of the Legislature that the cost associated with the handling, recycling, and disposal of covered electronic devices is the responsibility of the producers and consumers of covered electronic devices, and not local government or their service providers, state government, or taxpayers.

(d) In order to reduce the likelihood of illegal disposal of these hazardous materials, it is the intent of this chapter to ensure that any cost associated with the proper management of covered electronic devices be internalized by the

* Article 4 was added by Stats. 2003, Ch. 526 (SB 20), in effect January 1, 2004.

producers and consumers of covered electronic devices at or before the point of purchase, and not at the point of discard.

(e) Manufacturers of covered electronic devices, in working to achieve the goals and objectives of this chapter, should have the flexibility to partner with each other and with those public sector entities and business enterprises that currently provide collection and processing services to develop and promote a safe and effective covered electronic device recycling system for California.

(f) The producers of electronic products, components, and devices should reduce and, to the extent feasible, ultimately phase out the use of hazardous materials in those products.

(g) Electronic products, components, and devices, to the greatest extent feasible, should be designed for extended life, repair, and reuse.

(h) The purpose of the Hazardous Electronic Waste Recycling Act is to provide sufficient funding for the safe, cost-free, and convenient collection and recycling of 100 percent of the covered electronic waste discarded or offered for recycling in the state, to eliminate electronic waste stockpiles and legacy devices by December 31, 2007, to end the illegal disposal of covered electronic devices, to establish manufacturer responsibility for reporting to the board on the manufacturer's efforts to phase out hazardous materials in electronic devices and increase the use of recycled materials, and to ensure that electronic devices sold in the state do not violate the regulations adopted by the Department of Toxic Substances Control pursuant to Section 25214.10 of the Health and Safety Code.

Article 2. Definitions

§ 42463. Definitions.

42463. **Definitions.** For the purposes of this chapter, the following terms have the following meanings, unless the context clearly requires otherwise:

(a) "Account" means the Electronic Waste Recovery and Recycling Account created in the Integrated Waste Management Fund under Section 42476.

(b) "Authorized collector" means any of the following:

(1) A city, county, or district that collects covered electronic devices.

(2) A person or entity that is required or authorized by a city, county, or district to collect covered electronic devices pursuant to the terms of a contract, license, permit, or other written authorization.

(3) A nonprofit organization that collects or accepts covered electronic devices.

(4) A manufacturer or agent of the manufacturer that collects, consolidates, and transports covered electronic devices for recycling from consumers, businesses, institutions, and other generators.

(5) An entity that collects, handles, consolidates, and transports covered electronic devices and has filed applicable notifications with the department

pursuant to Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations.

(c) “Board” means the California Integrated Waste Management Board.

(d) “Consumer” means a person who purchases a new or refurbished covered electronic device in a transaction that is a retail sale or in a transaction to which a use tax applies pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(e) “Department” means the Department of Toxic Substances Control.

(f) (1) “Except as provided in paragraph (2), “covered electronic device” means a video display device containing a screen greater than four inches, measured diagonally, that is identified in the regulations adopted by the department pursuant to subdivision (b) of Section 25214.10.1 of the Health and Safety Code.

(2) “Covered electronic device” does not include any of the following:

(A) A video display device that is a part of a motor vehicle, as defined in Section 415 of the Vehicle Code, or any component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle.

(B) A video display device that is contained within, or a part of a piece of industrial, commercial, or medical equipment, including monitoring or control equipment.

(C) A video display device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier.

(D) An electronic device, on and after the date that it ceases to be a covered electronic device under subdivision (e) of Section 25214.10.1 of the Health and Safety Code.

(g) “Covered electronic waste” or “covered e-waste” means a covered electronic device that is discarded.

(h) “Covered electronic waste recycling fee” or “covered e-waste recycling fee” means the fee imposed pursuant to Article 3 (commencing with Section 42464).

(i) “Covered electronic waste recycler” or “covered e-waste recycler” means any of the following:

(1) A person who engages in the manual or mechanical separation of covered electronic devices to recover components and commodities contained therein for the purpose of reuse or recycling.

(2) A person who changes the physical or chemical composition of a covered electronic device, in accordance with the requirements of Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code and the regulations adopted pursuant to that chapter, by

deconstructing, size reduction, crushing, cutting, sawing, compacting, shredding, or refining for purposes of segregating components, for purposes of recovering or recycling those components, and who arranges for the transport of those components to an end user.

(3) A manufacturer who meets any conditions established by this chapter and Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code for the collection or recycling of covered electronic waste.

(j) "Discarded" has the same meaning as defined in subdivision (b) of Section 25124 of the Health and Safety Code.

(k) "Electronic waste recovery payment" means an amount established and paid by the board pursuant to Section 42477.

(l) "Electronic waste recycling payment" means an amount established and paid by the board pursuant to Section 42478.

(m) "Hazardous material" has the same meaning as defined in Section 25501 of the Health and Safety Code.

(n) "Manufacturer" means any of the following:

(1) A person who manufactures a covered electronic device sold in this state.

(2) A person who sells a covered electronic device in this state under that person's brand name.

(o) "Person" means an individual, trust firm, joint stock company, business concern, and corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association. Notwithstanding Section 40170, "person" also includes a city, county, city and county, district, commission, the state or a department, agency, or political subdivision thereof, an interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.

(p) "Recycling" has the same meaning as defined in subdivision (a) of Section 25121.1 of the Health and Safety Code.

(q) "Refurbished," when used to describe a covered electronic device, means a device that the manufacturer has tested and returned to a condition that meets factory specifications for the device, has repackaged, and has labeled as refurbished.

(r) "Retailer" means a person who makes a retail sale of a new or refurbished covered electronic device. "Retailer" includes a manufacturer of a covered electronic device who sells that covered electronic device directly to a consumer through any means, including, but not limited to, a transaction conducted through a sales outlet, catalog, or the Internet, or any other similar electronic means.

(s) (1) "Retail sale" has the same meaning as defined under Section 6007 of the Revenue and Taxation Code.

(2) “Retail sale” does not include the sale of a covered electronic device that is temporarily stored or used in California for the sole purpose of preparing the covered electronic device for use thereafter solely outside the state, and that is subsequently transported outside the state and thereafter used solely outside the state.

(t) “Video display device” means an electronic device with an output surface that displays, or is capable of displaying, moving graphical images or a visual representation of image sequences or pictures, showing a number of quickly changing images on a screen in fast succession to create the illusion of motion, including, if applicable, a device that is an integral part of the display, in that it cannot be easily removed from the display by the consumer, that produces the moving image on the screen. A video display device may use, but is not limited to, a cathode ray tube (CRT), liquid crystal display (LCD), gas plasma, digital light processing, or other image projection technology.

History.—Amended by Stats. 2004, Ch. 863 (SB 50), in effect September 29, 2004.

Article 3. Covered Electronic Waste Recycling Fee

§ 42464. Covered electronic waste recycling fee.

§ 42464.2. Collection of fees by board. [Repealed.]

§ 42464.2. Collection of fees.

§ 42464.4. Due date; returns and payments.

§ 42464.6. Petition for redetermination and claim for refund.

42464. Covered electronic waste recycling fee. (a) On and after January 1, 2005, or as otherwise provided by Section 25214.10.1 of the Health and Safety Code, a consumer shall pay a covered electronic waste recycling fee upon the purchase of a new or refurbished covered electronic device, in the following amounts:

(1) Six dollars (\$6) for each covered electronic device with a screen size of less than 15 inches measured diagonally.

(2) Eight dollars (\$8) for each covered electronic device with a screen size greater than or equal to 15 inches but less than 35 inches measured diagonally.

(3) Ten dollars (\$10) for each covered electronic device with a screen size greater than or equal to 35 inches measured diagonally.

(b) Except as provided in subdivision (d), a retailer shall collect from the consumer a covered electronic waste recycling fee at the time of the retail sale of a covered electronic device.

(c) A retailer may retain 3 percent of the covered electronic waste recycling fee as reimbursement for all costs associated with the collection of the fee and shall transmit the remainder of the fee to the state pursuant to Section 42464.4.

(d) If a retailer elects to pay the covered electronic waste recycling fee on behalf of the consumer, the retailer shall provide an express statement to that effect on the receipt given to the consumer at the time of sale. If a retailer

elects to pay the covered electronic waste recycling fee on behalf of the consumer, the fee is a debt owed by the retailer to the state, and the consumer is not liable for the fee.

(e) The retailer shall separately state the covered electronic waste recycling fee on the receipt given to the consumer at the time of sale.

(f) On or before August 1, 2005, and, thereafter, no more frequently than annually, and no less frequently than biennially, the board, in collaboration with the department, shall review, at a public hearing, the covered electronic waste recycling fee and shall make any adjustments to the fee to ensure that there are sufficient revenues in the account to fund the covered electronic waste recycling program established pursuant to this chapter. Adjustments to the fee that are made on or before August 1 shall apply to the calendar year beginning the following January 1. The board shall base any adjustment of the covered electronic waste recycling fee on the both of the following factors:

(1) The sufficiency, and any surplus, of revenues in the account to fund the collection, consolidation, and recycling of covered electronic waste that is projected to be recycled in the state.

(2) The sufficiency of revenues in the account for the board and the department to administer, enforce, and promote the program established pursuant to this chapter, plus a prudent reserve not to exceed 5 percent of the amount in the account.

History.—Amended by Stats. 2004, Ch. 863 (SB 50), in effect September 29, 2004.

42464.2. **Collection of fees by board.** [Repealed by Stats. 2004, Ch. 863 (SB 50), in effect September 29, 2004.]

42464.2. **Collection of fees.** The State Board of Equalization shall collect the fee imposed pursuant to this chapter under the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). For the purposes of this section, a reference in the Fee Collection Procedures Law to “feepayer” shall include a retailer and a consumer.

History.—Added by Stats. 2004, Ch. 863 (SB 50), in effect September 29, 2004.

42464.4. **Due date; returns and payments.** (a) The covered electronic waste recycling fee shall be due and payable quarterly on or before the last day of the month following each calendar quarter. The payments shall be accompanied by a return in the form as prescribed by the State Board of Equalization or that person authorized to collect, including, but not limited to, electronic media.

(b) The State Board of Equalization may require the payment of the fee and the filing of returns for other than quarterly periods.

History.—Added by Stats. 2004, Ch. 863 (SB 50), in effect September 29, 2004.

42464.6. **Petition for redetermination and claim for refund.** (a) The State Board of Equalization shall not accept or consider a petition for redetermination of fees determined under this chapter if the

petition is founded upon the grounds that an item is or is not a covered electronic device. The State Board of Equalization shall forward to the department any appeal of a determination that is based on the grounds that an item is or is not a covered electronic device.

(b) The State Board of Equalization shall not accept or consider a claim for refund of fees paid pursuant to this chapter if the claim is founded upon the grounds that an item is or is not a covered electronic device. The State Board of Equalization shall forward to the department any claim for refund that is based on the grounds that an item is or is not a covered electronic device.

History.—Added by Stats. 2004, Ch. 863 (SB 50), in effect September 29, 2004.

Article 4. Manufacturer Responsibility

§ 42465. Sales of noncomplying electronic devices unlawful.

§ 42465.1. Manufacturer's name of brand to be readily visible.

§ 42465.2. Duties of manufacturers; information and report.

§ 42465.3. Manufacturer notification requirements.

42465. Sales of noncomplying electronic devices unlawful. On and after the date specified in subdivision (a) of Section 42464, a person shall not sell a new or refurbished covered electronic device to a consumer in this state if the board or department determines that the manufacturer of that covered electronic device is not in compliance with this chapter or as provided otherwise by Section 25214.10.1 of the Health and Safety Code.

History.—Amended by Stats. 2004, Ch. 863 (SB 50), in effect September 29, 2004.

42465.1. Manufacturer's name of brand to be readily visible. On and after January 1, 2005, or as specified otherwise in Section 25214.10.1 of the Health and Safety Code, a person may not sell or offer for sale in this state a new or refurbished covered electronic device unless the device is labeled with the name of the manufacturer or the manufacturer's brand label, so that it is readily visible.

History.—Amended by Stats. 2004, Ch. 863 (SB 50), in effect September 29, 2004.

42465.2. Duties of manufacturers; information and report. (a) On or before July 1, 2005, or as specified otherwise in Section 25214.10.1 of the Health and Safety Code, and at least once annually thereafter as determined by the board, each manufacturer of a covered electronic device sold in this state shall do all of the following:

(1) Submit to the board a report that includes all of the following information:

(A) An estimate of the number of covered electronic devices sold by the manufacturer in the state during the previous year.

(B) A baseline or set of baselines that show the total estimated amounts of mercury, cadmium, lead, hexavalent chromium, and PBB's used in covered electronic devices manufactured by the manufacturer in that year and the reduction in the use of those hazardous materials from the previous year.

(C) A baseline or set of baselines that show the total estimated amount of recyclable materials contained in covered electronic devices sold by the manufacturer in that year and the increase in the use of those recyclable materials from the previous year.

(D) A baseline or a set of baselines that describe any efforts to design covered electronic devices for recycling and goals and plans for further increasing design for recycling.

(E) A list of those retailers, including, but not limited to, Internet and catalog retailers, to which the manufacturer provided a notice in the prior 12 months pursuant to Section 42465.3 and subdivision (c) of Section 25214.10.1 of the Health and Safety Code.

(2) Make information available to consumers, that describes where and how to return, recycle, and dispose of the covered electronic device and opportunities and locations for the collection or return of the device, through the use of a toll-free telephone number, Internet Web site, information labeled on the device, information included in the packaging, or information accompanying the sale of covered electronic device.

(b) (1) For the purposes of complying with paragraph (1) of subdivision (a), a manufacturer may submit a report to the board that includes only those covered electronic devices that include applications of the compounds listed in subparagraph (B) of paragraph (1) of subdivision (a) that are exempt from the Directive 2002/95/EC adopted by the European Parliament and the Council of the European Union on January 27, 2003, and any amendments made to that directive, if both of the following conditions are met, as modified by Section 24214.10 of the Health and Safety Code:

(A) The manufacturer submits written verification to the department that demonstrates, to the satisfaction of the department, that the manufacturer is in compliance with Directive 2002/95/EC, and any amendments to that directive, for those covered electronic devices for which it is not submitting a report to the board pursuant to this subdivision.

(B) The department certifies that the manufacturer is in compliance with Directive 2002/95/EC, and any amendments to that directive, for those covered electronic devices for which the manufacturer is not submitting a report to the board pursuant to this subdivision.

(2) When reporting pursuant to this subdivision, a manufacturer is required only to report on specific applications of compounds used in covered electronic devices that are exempt from Directive 2002/95/EC.

(c) Any information submitted to the board pursuant to subdivision (a) that is proprietary in nature or a trade secret shall be subject to protection under state laws and regulations governing that information.

42465.3. **Manufacturer notification requirements.** A manufacturer of a covered electronic device shall comply with the notification requirements of subdivision (c) of Section 25214.10.1 of the Health and Safety Code.

History.—Amended by Stats. 2004, Ch. 863 (SB 50), in effect September 29, 2004.

Article 5. Administration

§ 42472. Statewide applicability of fee; local collection or recycling programs.

§ 42473. Fee declared not to be a tax.

§ 42474. Civil penalties.

§ 42474.5. Enforcement of chapter.

§ 42475. Administration of chapter.

§ 42475.1. Adoption of regulations by board and department. [Repealed.]

§ 42475.2. Emergency regulations.

§ 42475.3. Electronic waste working group.

§ 42475.4. Annual statewide recycling goals for covered electronic waste.

42472. **Statewide applicability of fee; local collection or recycling programs.** (a) The imposition of a covered electronic waste recycling fee is a matter of statewide interest and concern and is applicable uniformly throughout the state. A city, county, city and county, or other public agency may not adopt, implement, or enforce an ordinance, resolution, regulation, or rule requiring a consumer, manufacturer, or retailer to recycle covered electronic devices or imposing a covered electronic waste recycling fee upon a manufacturer, retailer, or consumer, unless expressly authorized under this chapter.

(b) Nothing in this section prohibits the adoption, implementation, or enforcement of any local ordinance, resolution, regulation, or rule governing curbside or drop off recycling programs operated by, or pursuant to a contract with, a city, county, city and county, or other public agency, including any action relating to fees for these programs. Nothing in this section shall be construed to affect any contract, franchise, permit, license, or other arrangement regarding the collection or recycling of solid waste or household hazardous waste.

42473. **Fee declared not to be a tax.** The Legislature declares that the imposition of a covered electronic waste recycling fee would not result in the imposition of a tax within the meaning of Article XIII A of the California Constitution, because the amount and nature of the fee has a fair and reasonable relationship to the adverse environmental burdens imposed by the disposal of covered electronic devices and there is a sufficient nexus between the fee imposed and the use of those fees to support the recycling and reuse of these devices.

42474. **Civil penalties.** (a) Civil liability in an amount of up to two thousand five hundred dollars (\$2,500) per offense may be administratively imposed by the board for each sale of a covered electronic device for which a covered electronic waste recycling fee has not been paid pursuant to Section 42464.

(b) A civil penalty in an amount of up to five thousand dollars (\$5,000) per offense may be imposed by a superior court for each sale of a covered electronic device for which a covered electronic waste recycling fee has not been paid pursuant to Section 42464.

(c) Civil liability in an amount of up to twenty-five thousand dollars (\$25,000) may be administratively imposed by the board against manufacturers for failure to comply with this chapter, except as otherwise provided in subdivision (a).

42474.5. **Enforcement of chapter.** This chapter and all regulations adopted pursuant to this chapter may be enforced by the department pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

42475. **Administration of chapter.** (a) The board shall administer and enforce this chapter in consultation with the department.

(b) The board and the department may adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that are necessary to implement this chapter, and any other regulations that the board and the department determines are necessary to implement the provisions of this chapter in a manner that is enforceable.

(c) The board shall adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that ensure the protection of any proprietary information submitted to the board by a manufacturer of covered electronic devices.

(d) The board and the department may prepare, publish, or issue any materials that the board or department determines to be necessary for the dissemination of information concerning the activities of the board or department under this chapter.

(e) In carrying out this chapter, the board and the department may solicit and use any and all expertise available in other state agencies, including, but not limited to, the department, the Department of Conservation, and the State Board of Equalization.

History.—Amended by Stats. 2004, Ch. 863 (SB 50), in effect September 29, 2004.

42475.1. **Adoption of regulations by board and department.** [Repealed by Stats. 2004, Ch. 863 (SB 50), in effect September 29, 2004.]

42475.2. **Emergency regulations.** (a) The board and the department may each adopt regulations to implement and enforce this chapter as emergency regulations.

(b) The emergency regulations adopted pursuant to this chapter shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of

Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the board or the department pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect for a period of two years or until revised by the department or the board, whichever occurs sooner.

History.—Amended by Stats. 2004, Ch. 863 (SB 50), in effect September 29, 2004.

42475.3. **Electronic waste working group.** The board in collaboration with the department shall convene a covered electronic waste working group comprised of representatives from manufacturers of covered electronic devices and other interested parties to develop and, by July 1, 2005, advise the board and the State and Consumer Services Agency on environmental purchasing criteria that may be used by state agencies to identify covered electronic devices with reduced environmental impacts. In defining criteria, the group shall consider the environmental impacts of products over their entire life cycle, as well as tradeoffs in other product attributes such as safety, product functionality, and cost. The group shall also consider any federal product evaluation or rating system, or market based system to promote the development and sale of environmentally conscious products.

42475.4. **Annual statewide recycling goals for covered electronic waste.** (a) The board shall annually establish, and update as necessary, statewide recycling goals for covered electronic waste. In implementing this section, the board shall do all of the following:

(1) Post on its Web site information on the amount of covered electronic devices sold in the state in the previous year as reported to the board.

(2) Post on its Web site information on the amount of covered electronic waste recycled in the state in the previous year as reported to the board.

(3) Develop and adopt recycling goals, with input from manufacturers, retailers, covered electronic waste recyclers, and collectors, that reflect projections of covered electronic device sales, rates of obsolescence, and stockpiles.

(b) Nothing in this section authorizes the board to establish any recycling rates or dates by which a manufacturer of covered electronic devices shall comply with this chapter, or to impose any other recycling goal or target on a manufacturer of those devices.

Article 6. Financial Provisions *

- § 42476. Electronic Waste and Recovery and Recycling Account.
- § 42476.5. Duties of person exporting covered electronic waste.
- § 42476.6. Export component part for reuse or recycling.
- § 42477. Electronic waste recovery payment schedule; authorized collector.
- § 42478. Electronic waste recovery payment schedule; recycler.
- § 42479. Payment process; eligibility for payment.

42476. Electronic Waste and Recovery and Recycling Account.

(a) The Electronic Waste and Recovery and Recycling Account is hereby established in the Integrated Waste Management Fund. All fees collected pursuant to this chapter shall be deposited in the account. Notwithstanding Section 13340 of the Government Code, the funds in the account are hereby continuously appropriated, without regard to fiscal year, for the following purposes:

(1) To pay refunds of the covered electronic waste recycling fee imposed under Section 42464.

(2) To make electronic waste recovery payments to an authorized collector of covered electronic waste pursuant to Section 42479.

(3) To make electronic waste recycling payments to covered electronic waste recyclers pursuant to Section 42479. (4) To make payments to manufacturers pursuant to subdivision (g).

(b) (1) The money in the account may be expended for the following purposes only upon appropriation by the Legislature in the annual Budget Act:

(A) For the administration of this chapter by the board and the department.

(B) To reimburse the State Board of Equalization for its administrative costs of registering, collecting, making refunds, and auditing retailers and consumers in connection with the covered electronic waste recycling fee imposed under Section 42464.

(C) To provide funding to the department to implement and enforce Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, as that chapter relates to covered electronic devices, and any regulations adopted by the department pursuant to that chapter.

(D) To establish the public information program specified in subdivision (d).

(2) Any fines or penalties collected pursuant to this chapter shall be deposited in the Electronic Waste Penalty Subaccount, which is hereby established in the account. The funds in the Electronic Waste Penalty Subaccount may be expended by the board or department only upon appropriation by the Legislature.

* NOTE.—SEC. 24, of Stats. 2004, Ch. 863 (SB 50), effective September 29, 2004, states, (a) The Director of Finance shall transfer, as a loan, up to five million dollars (\$5,000,000) from the General Fund, and up to twenty-five million dollars (\$25,000,000) from any special fund authorized by law, to the California Integrated Waste Management Board, to implement the changes made to the Electronic Waste Recycling Act by the act adding this section.

(b) Any loan made pursuant to this section shall be repaid on or before November 1, 2005, and shall be repaid prior to making any expenditures pursuant to paragraph (1), (2), (3) or (4) of subdivision (a) of Section 42476 of the Public Resources Code.

(c) Notwithstanding Section 16475 of the Government Code, any interest earned upon funds in the Electronic Waste Recovery and Recycling Account shall be deposited in that account for expenditure pursuant to this chapter.

(d) Not more than 1 percent of the funds annually deposited in the Electronic Waste Recovery and Recycling Account shall be expended for the purposes of establishing the public information program to educate the public in the hazards of improper covered electronic device storage and disposal and on the opportunities to recycle covered electronic devices.

(e) The board shall adopt regulations specifying cancellation methods for the recovery, processing, or recycling of covered electronic waste.

(f) The board may pay an electronic waste recycling payment or electronic waste recovery payment for covered electronic waste only if all of the following conditions are met:

(1) The covered electronic waste, including any residuals from the processing of the waste, is handled in compliance with all applicable statutes and regulations.

(2) The manufacturer or the authorized collector or recycler of the electronic waste provide a cost free and convenient opportunity to recycle electronic waste, in accordance with the legislative intent specified in subdivision (b) of Section 42461.

(3) If the covered electronic waste is processed, the covered electronic waste is processed in this state according to the cancellation method authorized by the board.

(4) The board declares that the state is a market participant in the business of the recycling of covered electronic waste for all of the following reasons:

(A) The fee is collected from the state's consumers for covered electronic devices sold for use in the state.

(B) The purpose of the fee and subsequent payments is to prevent damage to the public health and the environment from waste generated in the state.

(C) The recycling system funded by the fee ensures that economically viable and sustainable markets are developed and supported for recovered materials and components in order to conserve resources and maximize business and employment opportunities within the state.

(g) (1) The board may make a payment to a manufacturer that takes back a covered electronic device from a consumer in this state for purposes of recycling the device at a processing facility. The amount of the payment made by the board shall equal the value of the covered electronic waste recycling fee paid for that device. To qualify for a payment pursuant to this subdivision, the manufacturer shall demonstrate both of the following to the board:

(A) The covered electronic device for which payment is claimed was used in this state.

(B) The covered electronic waste for which a payment is claimed, including any residuals from the processing of the waste, has been, and will be, handled in compliance with all applicable statutes and regulations.

(2) A covered electronic device for which a payment is made under this subdivision is not eligible for an electronic waste recovery payment or an electronic waste recycling payment under Section 42479.

History.—Amended by Stats. 2004, Ch. 863 (SB 50), in effect September 29, 2004.

42476.5. Duties of person exporting covered electronic waste. A person who exports covered electronic waste, or a covered electronic device intended for recycling or disposal, to a foreign country, or to another state for ultimate export to a foreign country, shall do all of the following at least 60 days prior to export:

(a) Notify the department of the destination, disposition, contents, and volume of the waste, or device intended for recycling or disposal to be exported, and include with the notification the demonstrations required pursuant to subdivisions (b) to (e), inclusive.

(b) Demonstrate that the waste or device is being exported for the purposes of recycling or disposal.

(c) Demonstrate that the importation of the waste or device is not prohibited by an applicable law in the state or country of destination and that any import will be conducted in accordance with all applicable laws. As part of this demonstration, required import and operating licenses, permits, or other appropriate authorization documents shall be forwarded to the department.

(d) Demonstrate that the exportation of the waste or device is conducted in accordance with applicable United States or applicable international law.

(e) (1) Demonstrate that the waste or device will be managed within the country of destination only at facilities whose operations meet or exceed the binding decisions and implementing guidelines of the Organization for Economic Cooperation and Development for the environmentally sound management of the waste or device being exported.

(2) The demonstration required by this subdivision applies to any country of destination, notwithstanding that the country is not a member of the Organization for Economic Cooperation and Development.

History.—Amended by Stats. 2004, Ch. 863 (SB 50), in effect September 29, 2004.

42476.6. Export component part for reuse or recycling. Section 42476.5 does not apply to a component part of a covered electronic device that is exported to an authorized collector or recycler and that is reused or recycled into a new electronic component.

42477. Electronic waste recovery payment schedule; authorized collector. (a) On July 1, 2004, or as specified otherwise in Section 25214.10.1 of the Health and Safety Code, and on July 1 every two years thereafter, the board in collaboration with the department shall establish an electronic waste recovery payment schedule for covered electronic wastes generated in this state to cover the net cost for an authorized collector to operate a free and convenient system for collecting, consolidating and transporting covered electronic wastes generated in this state.

(b) The board shall make the electronic waste recovery payments either directly to an authorized collector or to a covered electronic waste recycler for payment to an authorized collector pursuant to this article.

History.—Amended by Stats. 2004, Ch. 863 (SB 50), in effect September 29, 2004.

42478. Electronic waste recycling payment schedule; recycler. (a) Except as provided in subdivision (b), on July 1, 2004, or as specified otherwise in Section 25214.10.1 of the Health and Safety Code, and on July 1 every two years thereafter, the board, in collaboration with the department shall establish a covered electronic waste recycling payment schedule for covered electronic wastes generated in this state to cover the average net cost for an electronic waste recycler to receive, process, and recycle each major category, as determined by the board, of covered electronic waste received from an authorized collector. The board shall make the electronic waste recycling payments to a covered electronic waste recycler pursuant to this article.

(b) Until the board adopts a new payment schedule that covers the average net cost for an electronic waste recycler to receive, process, and recycle each major category, as determined by the board of covered electronic waste received from an authorized collector, the amount of the covered electronic waste recycling payment shall be equal to twenty-eight cents (\$0.28) per pound of the total weight of covered electronic waste received from an authorized collector and subsequently processed for recycling.

History.—Amended by Stats. 2004, Ch. 863 (SB 50), in effect September 29, 2004.

42479. Payment process; eligibility for payment. (a) (1) For covered electronic waste collected for recycling on and after January 1, 2005, the board shall make electronic waste recovery payments and electronic waste recycling payments for the collection and recycling of covered electronic waste to an authorized collector or covered electronic waste recycler, respectively, upon receipt of a completed and verified invoice submitted to the board by the authorized collector or recycler in the form and manner determined by the board.

(2) To the extent authorized pursuant to Section 42477, a covered electronic waste recycler shall make the electronic waste recovery payments to an authorized collector upon receipt of a completed and verified invoice submitted to the recycler by the authorized collector in the form and manner determined by the board.

(b) An e-waste recycler is eligible for a payment pursuant to this section only if the e-waste recycler meets all of the following requirements:

(1) The e-waste recycler is in compliance with applicable requirements of Article 6 (commencing with Section 66273.70) of Chapter 23 of Division 4.5 of Title 22 of the California Code of Regulations.

(2) The e-waste recycler demonstrates to the board that any facility utilized by the e-waste recycler for the handling, processing, refurbishment, or recycling of covered electronic devices meets all of the following standards:

(A) The facility has been inspected by the department within the past 12 months and had been found to be operating in conformance with all applicable laws, regulations, and ordinances.

(B) The facility is accessible during normal business hours for unannounced inspections by state or local agencies.

(C) The facility has health and safety, employee training, and environmental compliance plans and certifies compliance with the plans.

(D) The facility meets or exceed the standards specified in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2, Division 4 (commencing with Section 3200), and Division 5 (commencing with Section 6300), of the Labor Code or, if all or part of the work is to be performed in another state, the equivalent requirements of that state.

History.—Amended by Stats. 2004, Ch. 863 (SB 50), in effect September 29, 2004.

Article 7. State Agency Procurement

§ 42480. Compliance with chapter by prospective bidders; violations.

42480. Compliance with chapter by prospective bidders; violations. (a) A state agency that purchases or leases covered electronic devices shall require each prospective bidder, to certify that it, and its agents, subsidiaries, partners, joint venturers, and subcontractors for the procurement, have complied with this chapter and any regulations adopted pursuant to this chapter, or to demonstrate that this chapter is inapplicable to all lines of business engaged in by the bidder, its agents, subsidiaries, partners, joint venturers, or subcontractors.

(b) Failure to provide certification pursuant to this section shall render the prospective bidder and its agents, subsidiaries, partners, joint venturers, and subcontractors ineligible to bid on the procurement of covered electronic devices.

(c) The bid solicitation documents shall specify that the prospective bidder is required to cooperate fully in providing reasonable access to its records and documents that evidence compliance with this chapter.

(d) Any person awarded a contract by a state agency that is found to be in violation of this section is subject to the following sanctions:

(1) The contract shall be voided by the state agency to which the equipment, materials, or supplies were provided.

(2) The contractor is ineligible to bid on any state contract for a period of three years.

(3) If the Attorney General establishes in the name of the people of the State of California that any money, property, or benefit was obtained by a contractor as a result of violating this section, the court may, in addition to any other remedy, order the disgorgement of the unlawfully obtained money, property, or benefit in the interest of justice.

Article 8. Inapplicability of Chapter *

§ 42485. Chapter not to be implemented under certain circumstances.

§ 42486. Chapter not implemented; provisions remaining operative.

42485. Chapter not to be implemented under certain circumstances. Except as provided in subdivision (b) of Section 42486, the board and the department shall not implement this chapter if either of the following occur:

(a) A federal law, or a combination of federal laws, takes effect and does all of the following:

(1) Establishes a program for the collection, recycling, and proper disposal of covered electronic waste that is applicable to covered electronic devices sold in the United States.

(2) Provides revenues to the state to support the collection, recycling, and proper disposal of covered electronic waste, in an amount that is equal to, or greater than, the revenues that would be generated by the fee imposed under Section 42464.

(3) Requires covered electronic device manufacturers, retailers, handlers, processors, and recyclers to dispose of those devices in a manner that is in compliance with all applicable federal, state, and local laws and prohibits the devices from being exported for disposal in a manner that poses a significant risk to the public health or the environment.

(b) A trial court issues a judgment, which is not appealed, or an appellate court issues an order affirming a judgment of a trial court, holding that out-of-state manufacturers or retailers, or both, may not be required to collect the fee authorized by this chapter. The out-of-state manufacturers or retailers, or both, shall continue to collect the fee during the appellate process.

History.—Amended by Stats. 2004, Ch. 863 (SB 50), in effect September 29, 2004.

42486. Chapter not implemented; provisions remaining operative. (a) Except as provided in subdivision (b), the provisions of this chapter shall become inoperative on the date that either of the events described in subdivision (a) or (b) of Section 42485 occurs, and if both occur, the earlier date.

(b) On the date specified in subdivision (a), the provisions of this chapter shall remain operative only for the collection of fees, the liability for which accrued prior to that date, making refunds, effecting credits, the disposition of moneys collected, and commencing an action or proceeding pursuant to this chapter.

History.—Added by Stats. 2004, Ch. 863 (SB 50), in effect September 29, 2004.

* NOTE.—SEC. 5. of Stats. 2003, Ch. 526 (SB 20), effective January 1, 2004, states, the provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provisions or application.

8650.2
2005-1

COVERED ELECTRONIC WASTE RECYCLING FEE
Public Resources Code

INDEX

KEY TO ABBREVIATIONS

H.S. . . . Health and Safety Code

P.R.C. . . Public Resources Code

A

Administration . . . P.R.C. 42475
 civil penalty . . . P.R.C. 42474
 enforcement of chapter . . . P.R.C. 42474.5
 statewide applicability . . . P.R.C. 42472
Administration by Board of Equalization
 collection of fee . . . P.R.C. 42464.2

B

“Board” defined . . . P.R.C. 42463

C

Civil penalty . . . P.R.C. 42474
Claim for refund . . . P.R.C. 42464.6
“Consumer” defined . . . P.R.C. 42463
“Covered electronic waste recycling fee” defined . . . P.R.C. 42463
Covered electronic waste recycling fee
 adjustment . . . P.R.C. 42464
 due date . . . P.R.C. 42464.4
 not a tax . . . P.R.C. 42473
 rate . . . P.R.C. 42464
 retailer required to collect . . . P.R.C. 42464
“Covered electronic device” defined . . . P.R.C. 42463

D

“Department” defined . . . P.R.C. 42463
Disposition of proceeds . . . P.R.C. 42476

E

“Electronic device” defined . . . H.S. 25214.10.1
Electronic Waste and Recovery and Recycling Account . . . P.R.C. 42476
Electronic waste recovery payment schedule
 authorized collector . . . P.R.C. . . . 42477
 payment process . . . P.R.C. 42479
 recycler . . . P.R.C. 42478
Electronic waste working group . . . P.R.C. 42475.3
Exported covered electronic waste
 duties . . . P.R.C. 42476.5
 component parts for reuse or recycling . . . P.R.C. 42476.6

F

G

H

I

Inapplicability of chapter . . . P.R.C. 42485
 provisions remaining operative . . . P.R.C. 42486
Invoicing requirements . . . P.R.C. 42464

J

K

L

M

“Manufacturer” defined . . . P.R.C. 42463
Manufacturer responsibility
 information and report . . . P.R.C. 42465.2
 name of brand readily visible . . . P.R.C. 42465.1
 noncomplying electronic devices . . . P.R.C. 42465
 notification requirements . . . H.S. 25214.10.1
 device is covered electronic device . . . H.S. 25214.10.1
 non-hazardous concurrence . . . H.S. 25214.10.1
 requirement to comply . . . P.R.C. 42465.3

N

O

P

“Person” defined . . . P.R.C. 42463
Petition for redetermination . . . P.R.C. 42464.6

Q

R

“Refurbished” defined . . . P.R.C. 42463
Regulations; adoption by board and department . . . H.S. 25214.10
emergency regulations . . . H.S. 25244.10.2, P.R.C. 42475.2
“Retail sale” defined . . . P.R.C. 42463
“Retailer” defined . . . P.R.C. 42463
Retailer reimbursement . . . P.R.C. 42464
Returns and payments
due date . . . P.R.C. 42464.4

S

State agency procurement . . . P.R.C. 42480
Statewide recycling goals for covered electronic waste . . . P.R.C. 42475.4

T

U

V

“Video display device” . . . P.R.C. 42463

W

X

Y

Z